

**S.R.D.C. Inc. and Operating Engineers Local Union
No. 3 of the International Union of Operating
Engineers, AFL-CIO. Case 20-CA-24750**

October 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On July 17, 1992, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 20-RC-16682. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On September 28, 1992, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On September 30, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of the Board's disposition of certain challenged ballots in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California corporation with an office and place of business in various cities including but not limited to, Redwood City and Mountain View, California, has been engaged in the business of recycling concrete and asphalt.

During the 12-month period ending December 31, 1991, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 to enterprises within the State of California including Granite Rock, each of which meets the Board's standards for the assertion of jurisdiction on a direct basis. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held February 8, 1991,¹ the Union was certified on June 5, 1992, as the collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time employees engaged in recycling who are employed by Respondent and working out of its Redwood City and Mountain View, California locations; excluding toll collectors, gardeners, farm hands, office clerical employees, salesmen, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

¹ On February 12 and 14, 1991, respectively, the Union and the Respondent filed objections to the conduct of the election and conduct affecting the results of the election and on February 28 and August 13, respectively, both parties withdrew their objections. On August 20, 1991, the Regional Director issued a Report on Objections, Challenged Ballots and Notice of Hearing approving the withdrawal of each of the objections and recommending that a hearing be held on the challenged ballots. On January 13, 1992, the hearing officer issued a Report on Challenged Ballots recommending that the challenge to one ballot be sustained and that the challenges to five other ballots be opened and counted. On February 7, 1992, the Respondent filed exceptions to the hearing officer's Report on Challenged Ballots and on February 26, 1992, the Union filed cross-exceptions and a brief in opposition to the Respondent's exceptions. The Board reviewed the record in light of the exceptions and briefs and on May 14, 1992, issued a Decision and Direction in which it adopted the hearing officer's findings and recommendations and directed that the Regional Director open and count the five challenged ballots and issue a revised tally of ballots and, based on the count therein, issue an appropriate certification.

B. Refusal to Bargain

Since June 9, 1992,² the Union has requested the Respondent to bargain, and since June 16, 1992, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after June 16, 1992, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, S.R.D.C. Inc., Redwood City and Mountain View, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

² In its answer, the Respondent denies the complaint allegation that the Union has requested the Respondent to bargain since June 9. We find this denial raises no issue warranting a hearing. In this regard, we note that the Respondent does not challenge the authenticity of a letter dated June 9 sent by the Union requesting that the Respondent commence negotiations, a copy of which the General Counsel has submitted with his Motion for Summary Judgment. We also note that the Respondent has admitted the complaint allegation that it has refused to bargain with the Union.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full time and regular part time employees engaged in recycling who are employed by Respondent and working out of its Redwood City and Mountain View, California locations; excluding toll collectors, gardeners, farm hands, office clerical employees, salesmen, guards and supervisors as defined in the Act.

(b) Post at its facilities in Redwood City and Mountain View, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full time and regular part time employees engaged in recycling who are employed by us and working out of our Redwood City and Mountain View, California locations; excluding toll collectors, gardeners, farm hands, office clerical em-

ployees, salesmen, guards and supervisors as defined in the Act.

S.R.D.C. INC.